
(2010) 08 AHC CK 0031
In the Allahabad High Court

Ram Gopal Shori and Another

APPELLANT

Vs

Prescribed Authority/Civil Judge and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20

Citation : (2010) 08 AHC CK 0031

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This writ petition has been filed for quashing the order dated 28.7.2010 passed by the Prescribed Authority/Civil Judge in PA. Case No. 11 of 2007, (appended as Annexure-5 to the writ petition) and also to allow the impleadment application of the petitioners in the aforesaid case.

3. The facts culled out from the record are that Late Hazi Mohd. Noor was the landlord of the shop in dispute of which Late Hans Roop Shori was the tenant since 1980. After death of Hans Room Shori, the tenancy devolved upon his three sons namely Sheo Deo, Ram Gopal and Jai Kishan Shori. Before his death, Hazi Mohd. Noor (landlord) executed a WILL deed dated 23.11.2005 in favour of his son Habibur Rahman. On the death of Hazi Mohd. Noor on 4.8.2006, Habibur Rahman acquired ownership of the shop in question and filed release application u/s 20(2)(a) of the Act No. 13 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter referred as "Act" before the Prescribed Authority setting up his personal need to carry out business of ready made garments in the aforesaid shop.

4. Shiv Deo Shori, eldest brother of the two petitioners filed written statement

disputing the need of the landlord Habibur Rahman and also stated therein that he is contesting the suit on his own and on behalf of his two younger brothers who had interest in the tenancy of the shop who were working with him and that the families of the three brothers were dependent upon the income from the shop which was their source of livelihood.

5. After the evidence was adduced by the parties and the matter was heard finally written arguments were submitted.

6. It was at this stage that an application for impleadment was moved by the petitioners Ram Gopal Shori and Jai Kishna Shori on the ground inter alia that until July 2010, there was no dispute in family of the petitioners between them and their elder brother Sheo Deo Shori, but in the first week of July 2010 Shiv Deo Shori declared that he would not pursue the matter any further on behalf of the petitioners; and refused partition of business saying that he was the sole proprietor of the medical shop. It was averred that Sheo Deo Shori is now in collusion with the landlord Habibur Rahman, hence they wanted themselves to be impleaded in order to save-guard their respective interest in the case.

7. Paragraphs 1 and 2 of the affidavit filed in support of impleadment application is quoted as under:

1. That the deponents (petitioners) are real younger brothers of opposite party and are tenants in common of the shop in question and are well conversant with the facts.

2. That the deponents (petitioners) as soon as got the knowledge of this case, they contacted with Sri Alok Kumar Goel, Advocate and enquired about the details of the case and got prepared the application for impleadment of parties.

8. Since personal allegations regarding collusion with the landlord was made by two brothers against elder brother Sheo Deo Shori, he contested the case on their behalf and denied the same.

9. In reply to the impleadment application, clarification was filed by Sheo Deo Shori in which it has been stated that false allegations have been made upon him by the petitioners in the impleadment application, that in the very beginning in his written statement to the plaint he had made it clear that his two brothers also have right in the tenancy of the shop devolved upon them which is clear from reading of paragraphs 11 and 24 as well as from his evidence; that he is not contesting the case only on his own behalf and that neither he has ever been in collusion with the plaintiff-landlord nor any question to collude with him arises. It was lastly averred by Sheo Deo Shori in the reply to the impleadment application of petitioners that he is only replying the allegations made by his brothers against him.

10. The order dated 28.7.2010 has been passed by the court below rejecting the impleadment application filed by the petitioners on the ground that petitioners cannot be impleaded in the present case as the eldest brother Sheo Deo Shori is

contesting the case for common cause.

11. Learned Counsel for the petitioners submits that since interest of the petitioners is common with their brothers they were necessary party in the suit and the court below has therefore wrongly rejected the impleadment application.

12. Learned Counsel for the petitioners has relied upon paragraph No. 4 of the judgment rendered by the apex court in Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup and another, in support of his case. Relevant paragraph 4 of the said judgment is as under:

Learned Counsel for the appellants argued that, the ex parte decree obtained against the joint tenants was equally binding on the respondent. Reference was made in this context to the decisions of this Court in Kanji Manji Vs. The Trustees of The Port of Bombay, and H.C. Pandey Vs. G.C. Paul, Both the cases relate to the validity of the notice issued to one of the joint tenants. It was held that the notice issued to one of them would be valid. We do not think that the principle stated in those cases on the facts obtained are relevant to the present case. There is a finding in this case that the respondent was as much a tenant as the mother and the other brother. That being the position the ex parte decree for eviction obtained against his mother and brother without impleading him in that suit has to be set aside. It is not sufficient as the Courts below have said that the decree was not binding upon the respondent. That decree cannot be kept alive against two other tenants and possession of the premises could be exclusively given to the respondent. The respondent cannot be put into exclusive possession of the premises since his mother and brother are also equally entitled to. It seems to us, therefore, the ex parte decree for eviction should be set aside and the petitioner should be impleaded as a party to that suit and it should proceed on merits

13. Learned Counsel for the petitioners has also relied upon a judgment rendered by the apex court in the case of Surayya Begum v. Mohd. Usman reported in 1991 SCC 3 114. Relevant paragraph 9 of the said judgment is as under:

The principle of representation of the interest of a person, not impleaded by name in a judicial proceeding, through a named party is not unknown. A karta of a Joint Hindu Family has always been recognized as a representative of the other members of the Joint Hindu family, and so has been a trustee. In cases where the provisions of Order I, Rule 8 of the CPC are attracted a named party in a suit represents the other persons interested in the litigation, and likewise a receiver appointed in one case represents the interest of the litigating parties in another case against a stranger. Similarly the real owner is entitled to the benefits under a decree obtained by his benamidar against a stranger and at the same time is also bound by the decision.

14. On reading of the aforesaid paragraphs upon which learned Counsel for the petitioners has relied upon it is clear that facts and circumstances of the cases Textile Association of India (supra) and Surayya Begum (supra) were different

and as the judgments rendered therein is peculiar to the facts and circumstances of these cases as such the ratio of law laid therein will not apply in the facts of the present case. In the present case there is no decree much less ex parte decree operating against the petitioners and even his brother who is contesting the suit on their behalf. As regards in the case of Surayya Begum v. Mohd. Usman (supra) it has been held that if interest of a person (s) concerned has really been represented by the others then situation and position of law is different i.e. in other words his interest has been looked after in a bona fide manner. From a case in which where there is clash of interests between the person concerned and his assumed representative or if the latter due to collusion or for any other reason, mala fide neglects to defend the case, he cannot be considered to be a representative.

15. In the instant case there is no case of the petitioners that their elder brother neglected to contest the case or did not contest the case malafide as in his written statement as well as in reply to allegations of collusion and even in his evidence he has stated that his interest is common/joint with two brothers who are petitioners in this case. This only leaves the allegation of his collusion with the landlord which has been denied by him and have also rightly come to the conclusion that the petitioners have filed impleadment application only to delay the proceedings in the present case. Except for bald allegation that the petitioners have come to know that Sheo Deo Shori has colluded with the landlord, there is no iota of proof or even evidence to this statement by them. Rather it appears that all three of them are colluding to delay judgment in the suit. The courts below have rightly held that petitioners have knowledge about the case as has already been averred in paragraph 2 of the affidavit supporting impleadment application.

16. This matter can also be looked into with another angle i.e. admittedly the license of the disputed shop is in the name of elder brother who is contesting the suit on his behalf and on behalf of two brothers. If Sheo Deo Shori, the elder brother is evicted from the disputed shop all of them could lose their livelihood and would also be evicted from the shop which would be of very serious consequence to all of them. So allegation against elder brother colluding with the landlord appears to be incorrect and to have been made in order to give colour to the application for impleadment. Moreover, this petitioner is against an interlocutory order by which the application of the petitioner for impleadment has been found to be not maintainable because in this view of the matter also petitioners have no locus standi.

17. In the circumstances, I am of the considered view that the courts below have not committed any illegality in coming to the conclusion that petitioners had filed impleadment application only to delay the proceedings of the case.

18. For all the reasons stated above, I am not inclined to interfere in this case.

19. The writ petition is dismissed.